In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 346

HICKMAN GARMENT CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONSE OF THE NATIONAL LABOR RELATIONS BOARD TO SUPPLEMENTAL PETITION FOR A WRIT OF CERTIORARI

Petitioner, in a document entitled "Supplemental Petition for a Writ of Certiorari," asserts that the decision in the instant case is in conflict with that of the Court of Appeals for the Fourth Circuit in *Cone Mills Corp.* v. *National Labor Relations Board*, 71 LRRM 2916, decided July 16, 1969. In *Cone*, however, the court specifically noted that the employees were not discharged merely because they failed to stop their in-plant protest and return to work (as in the present case), but because, after the employer had considered their complaint and then told them either to return to work or to continue their "strike" off the premises, they "defiantly insisted upon carrying on

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and prolonging the work stoppage on company property during working hours." 71 LRRM at 2921–2922.[1] Indeed, in *National Labor Relations Board* v. *Hanes Hosiery Division*, 71 LRRM 2922, decided July 18, 1969, the Court of Appeals for the Fourth Circuit confirmed the limited scope of *Cone*, by sustaining the Board's findings that the discharge of an employee for organizing an in-plant work stoppage violated Section 8(a)(1) of the Act, and pointing out (71 LRRM at 2923, n. 1):

> Although both the company and the workers referred to this protest as a "sitdown," it did not involve a seizure of the plant or a refusal to leave the premises. See *NLRB* v. *Fansteel Metal Corp.*, 306 U.S. 240 * * *; *Cone Mills Corp.* v. *NLRB* * * *, 71 LRRM 2916 (4th Cir. 1969).

For these reasons, as well as those set forth in the Board's Brief in Opposition, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 1969.

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[1] The court in *Cone* also noted that the employees "had a right and an opportunity to have their protest or grievance heard and considered by top management through orderly channels at a later time," since a "grievance procedure" was then in effect; but "they were not interested in being heard." 71 LRRM at 2920.

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